authority in this country to the effect that affirmative covenants will be binding on subsequent grantees taking with notice, and also that some of the New York decisions would seem to hold the same way, said that the rule finally laid down was the wiser one and did not directly override any New York decision. The court remarked that the New York decisions enforcing covenants to build party walls, fences and covenants to repair were merely exceptions to the general rule as laid down in the principal case. In spite of some decisions to the contrary it has become a well settled rule in England that affirmative covenants, with some exceptions, will not be enforced in the hands of subsequent purchasers. *Haywood* v. *Brunswick Bldg. Soc.*, L. R. 8 Q. B. 403; *London & S. W. Ry. Co.* v. *Gomm*, 20 Ch. Div. 562. On principle it would seem that there should be no distinction between the rules applicable to restrictive and affirmative covenants, since in either case the grantee purchases the land at a less price than he would be able to if there were no covenant in existence. And that is the view taken by the leading text-writers and by the majority of the courts in this country. *Whittenton Mfg. Co.* v. *Staples*, 164 Mass. 319; *Sharp* v. *Cheatham*, 88 Mo. 498; *Willoughby* v. *Lawrence*, 116 Ill. 11; *Maxon* v. *Lane*, 102 Ind. 364; *Gilmer* v. *Mobile Co.*, 79 Ala. 569; *Countryman* v. *Deck*, 13 Abb. N. C. 110; *R. R. Co.* v. *R. R. Co.*, 171 Pa. 284; *Lydick* v. *Balt. Co.*, 17 W. Va. 427; *Fledge* v. *Covington*, 122 Ky. 348; 3 POMEROY, EQ. JUR., § 1275 (3rd ed.); see 17 HARV. L. REV. 176, 18 ID. 214.

DAMAGES—PHYSICAL PAIN AND SUFFERING RESULTING FROM SEDUCTION.—The plaintiff alleged a promise of marriage and breach of the contract by the defendant. Evidence was admitted tending to show that the plaintiff, relying on the defendant's promise, submitted to intercourse resulting in pregnancy and birth of a child. The court instructed the jury that it might, in assessing the damages, take into consideration the pain and physical suffering occasioned by the birth of the child. On appeal *Held*, that the instruction was correct as the physical pain and suffering are not more remote than the mental suffering and humiliation resulting from the seduction and birth of child. *Booren* v. *McWilliams* (N. D. 1914), 145 N. W. 410.

The instruction and the opinion of the Supreme Court on it were only incidental to the decision of the case, but the doctrine advanced and followed by the court is unusual and extends the already liberal rule of compensation for seduction. At Common Law no recovery was allowed a woman for her seduction in an action for breach of a contract of marriage. *Weaver* v. *Bachert*, 2 Pa. St. 80, 44 Am. Dec. 159; *Wrynn* v. *Downey*, 27 R. I. 454, 4 L. R. A. (N. S.) 615. Generally, however, the courts have come to hold that evidence of seduction, resulting pregnancy, and birth of a child, are admissible to show mental suffering, loss of reputation and character, disgrace and humiliation. The theory is that the breach of the contract to marry is not only a breach of contract but also is a breach of trust and confidence, and that the elements of damage before mentioned are consequential results of the breach and therefore are recoverable. The feelings of the parties are so intimately connected with this contract that

they may be regarded as the subject-matter of the contract and its breach is a direct injury to them occasioning the real damage which is the gist of the recovery, *Chapman* v. *Western U. T. Co.*, 90 Ky. 265, 13 S. W. 888. But the cases extending the recovery thus far expressly refuse to go farther and allow a recovery for physical pain and suffering, apparently on the theory that it is not a consequence of the breach which furnishes the cause of action sued on, but is a result which would have occurred whether there had been a breach or not. *Giese* v. *Schultz*, 53 Wis. 462, 10 N. W. 598, 65 Wis. 487, 27 N. W. 353, 69 Wis. 521, 34 N. W. 913; *Dalrymple* v. *Green*, 88 Kan. 673, 129 Pac. 1145; *Musselman* v. *Barker*, 26 Neb. 737, 42 N. W. 759; *Schmidt* v. *Durnham*, 46 Minn. 227; *Salchert* v. *Reinig*, 135 Wis. 194; *Haymond* v. *Saucer*, 84 Ind. 3; *Osmun* v. *Winters*, 25 Or. 260, 35 Pac. 250; also see *Wrynn* v. *Downey*, *supra*, and case note 4 L. R. A. (N. S.) 616. In only one other case that has been found, has an instruction as broad as that in the principal case been approved. In *Wilds* v. *Bogan*, 57 Ind. 453, an instruction, on the measure of damages, was upheld which stated to the jury that if plaintiff had been seduced by the defendant under a promise of marriage and had given birth to his bastard child, they might, in assessing damages, take into consideration the plaintiff's feelings, pain and humiliation, in giving birth to such a child. But in the later case of *Haymond* v. *Saucer*, 84 Ind. 3, a different rule was laid down by the same court without comment on the previous case.

DIVORCE—HUSBAND'S LIABILITY FOR SUPPORT OF HIS MINOR CHILDREN AFTER DIVORCE.—A husband obtained a divorce from his wife on the ground of desertion, she being defaulted after service by publication. Neither the bill nor the decree made any reference to the child of the parties; the wife now seeks to recover sums expended in supporting the child, which has remained in her custody, and to obtain an order requiring the defendant to pay a certain sum monthly for its support. *Held*, that he is liable. *Schoennauer* v. *Schoennauer* (Wash. 1914), 137 Pac. 325.

The court overruled defendant's contention that, since the decree was granted because of the wife's fault, therefore she could not recover, declaring that defendant's liability for the support of the child had not been previously determined, and that such liability would remain even though the wife had been remiss. This defense was allowed in *Fitler* v. *Fitler*, 33 Pa. 50; *Fulton* v. *Fulton*, 52 Ohio 229, 49 Am. St. Rep. 720, 29 L. R. A. 678. See also *Foss* v. *Hartwell*, 168 Mass. 66, 37 L. R. A. 589; *Baldwin* v. *Foster*, 138 Mass. 449; *Glynn* v. *Glynn*, 94 Me. 465; *Lapworth* v. *Leach*, 79 Mich. 16; 12 MICH. L. REV. 149. It would seem that children should not be deprived of their right to support by their father, because of their mother's wrongdoing, and in accord with the principal case are *White* v. *White*, 169 Mo. App. 40, 154 S. W. 872; *Bemus* v. *Bemus* (Tex. Civ. App.), 133 S. W. 503. For a recent general discussion of the liability of the father to support his minor children see *Johnson* v. *Latty* (1914 N. D. Ohio), 210 Fed. 961, which affirms his liability.